

APPENDIX G – CONSIDERATION OF MATTERS OF NATIONAL ENVIRONMENTAL SIGNIFICANCE

In accordance with the bilateral agreement between the Commonwealth and NSW Governments, the Department provides the following additional information required by the Commonwealth Minister, in deciding whether or not to approve a proposal under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

G.1 REQUIREMENTS FOR DECISIONS ABOUT THREATENED SPECIES AND ENDANGERED ECOLOGICAL COMMUNITIES

In accordance with section 139 of the EPBC Act, in deciding whether or not to approve, for the purposes of section 18 or section 18A of the EPBC Act, the taking of an action and what conditions to attach to such an approval, the Commonwealth Minister must not act inconsistently with certain international environmental obligations, Recovery Plans or Threat Abatement Plans. The Commonwealth Minister must also have regard to relevant approved conservation advices.

Australia's International Obligations

Australia's obligations under the *Convention on Biological Diversity* (Biodiversity Convention) include the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources, including by appropriate access to genetic resources and by appropriate transfer of relevant technologies, taking into account all rights over those resources and to technologies, and by appropriate funding.

The Department considers that the project has been designed to avoid and minimise adverse impacts on biological diversity, as required under the Convention. The Department is satisfied that its assessment and recommendations with regard to the proposed clearing of 15.8 ha of Box Gum Woodland CEEC and potential Regent Honeyeater habitat are not inconsistent with the Biodiversity Convention, which promotes environmental impact assessment that avoids and minimises adverse impacts on biological diversity.

The Department has recommended a number of conditions that include mitigation and management measures to minimise any indirect impacts on Box Gum Woodland CEEC. It has recommended a condition that requires that the project's direct impacts to the Box Gum Woodland CEEC are offset in accordance with the NSW Offsets Policy. The Department is therefore satisfied that the environmental impact assessment process has avoided and minimised adverse impacts on biological diversity.

As required under the Biodiversity Convention, the recommended conditions require that all information related to the proposed action be publicly available to ensure equitable sharing of information and improved knowledge relating to biodiversity.

Australia's obligations under the *Convention on Conservation of Nature in the South Pacific* (Apia Convention) include encouraging the creation of protected areas which, together with existing protected areas, will safeguard representative samples of natural ecosystems (particular attention being given to endangered species), as well as superlative scenery, striking geological formations and regions. Additional obligations include using best endeavours to protect such fauna and flora (special attention being given to migratory species) so as to safeguard them from unwise exploitation and other threats that may lead to their extinction. The Apia Convention was suspended with effect from 13 September 2016. Nonetheless, Australia's obligations under the Convention have been taken into consideration. The recommendations are not inconsistent with the Convention which has the general aim of conservation of biodiversity.

The *Convention on International Trade in Endangered Species of Wild Flora and Faunas* (CITES) is an international agreement between governments which seeks to ensure that international trade in specimens of wild animals and plants does not threaten their survival. The recommendations are not inconsistent with CITES as the proposed action does not involve international trade in specimens of wild animals or plants.

Recovery Plans and Approved Conservation Advices – Box Gum Woodland CEEC

The National Recovery Plan for the *White Box - Yellow Box - Blakely's Red Gum Grassy Woodland And Derived Native Grassland* - a critically endangered ecological community (May 2011) considers the conservation requirements of this ecological community across its known range. It identifies actions to be undertaken to ensure long-term viability of the ecological community.

The Recovery Plan states that, due to the ecological community's occurrence on fertile soils, it has been extensively cleared for agriculture and intact remnants, including both trees and unmodified understorey, are now extremely rare. Clearing and fragmentation for urban, rural residential, agricultural and infrastructure development remain on-going threats to the Box Gum Woodland CEEC, while degradation resulting from inappropriate management and weed invasion by introduced perennial grasses continues to erode the conservation value of remnant areas. The overall objective of this Recovery Plan is to promote the recovery and prevent the extinction of the community.

Table 3 of the Recovery Plan includes the detailed recovery actions and performance criteria considered crucial to achieving this objective. In general terms, the performance criteria for the objectives of this plan include:

- an increase in the area of the listed ecological community and degraded sites under conservation management agreements and/or within the formal reserve system;
- an increase in areas which meet the minimum condition criteria for the nationally listed ecological community;
- maintenance of floristic diversity, structural complexity and ecological function of the ecological community across its distribution;
- a reduction in the level of specific threats;
- an improvement in the landscape connectivity for remnants of the listed ecological community; and
- an improvement in the overall condition of Box-Gum Grassy Woodland remnants within formally reserved areas, areas protected under various conservation agreements and priority areas on publicly managed land across its geographic range.

The Department is satisfied that the retirement of biodiversity credits for the clearing of 15.8 ha of Box Gum Woodland, required by draft condition 31 in Schedule 3, would result in an increase in the area of the listed community under a conservation management agreement (specifically through a Biobanking Agreement under the TSC Act). In addition to retiring biodiversity credits under draft condition 31 of Schedule 3, Gunlake would also be required to protect, maintain and enhance other land on the site with native vegetation including dominant species in the CEEC, which would satisfy the performance criteria in the second, third and fifth dot points above.

Draft condition 32 of Schedule 3, under which Gunlake must make suitable arrangements to provide long-term security and funding for the Biodiversity Offset Areas used to retire the credits identified in condition 31 of Schedule 3, satisfies the criteria in the sixth dot point.

In summary, the Department is satisfied that the project would be able to meet the recovery actions and performance criteria in the Recovery Plan to contribute to the long-term viability of the Box Gum Woodland CEEC.

Recovery Plans and Approved Conservation Advices – Regent Honeyeater

The National Recovery Plan for the Regent Honeyeater (*Anthochaera Phrygia*) was most recently made in April 2016, as a revision of the 1999-2003 Recovery Plan. It reiterates the findings of the earlier Recovery Plan that the probable major cause of long-term decline of the Regent Honeyeater is the clearing and fragmentation of woodland and forest habitat containing the bird's preferred eucalypt foraging species. The Recovery Plan notes that the major continuing threat is habitat degradation, particularly on-going reductions in habitat quality, lack of regeneration of key habitat types, and potentially altered flowering patterns within preferred habitat.

The Conservation Advice for the Regent Honeyeater was approved by the Commonwealth Minister on 25 June 2015. The Advice includes a description of the distribution, biology and threats to the species' decline which is noted to be mainly due to clearing, fragmentation and degradation of its habitat. The Department has considered the relevant Conservation Actions listed in the Advice, particularly the need to improve the extent and quality of habitat available to the Regent Honeyeater.

The objectives of the Recovery Plan and the Conservation Advice are to:

- reverse the long-term population trend of decline and increase the numbers of Regent Honeyeaters to a level where there is a viable, wild breeding population, even in poor breeding years; and
- maintain key Regent Honeyeater habitat in a condition that maximises survival and reproductive success, and provides refugia during periods of extreme environmental fluctuation.

In providing additional information on biodiversity (**Appendix F**) EMM concluded that the project would not result in clearing of habitat critical to the survival of the Regent Honeyeater and is therefore unlikely to result in significant impacts on the Regent Honeyeater as:

- the extension area does not occur in a core or other breeding area;
- Regent Honeyeaters have not been recorded within 20 km of the extension area; and
- the extension area contains poor quality potential foraging habitat for the species.

In consultation with OEH, the Department has reviewed the BAR and the RTS for this species and agrees with EMM's conclusions that the project would not remove habitat that is critical to the survival of this species as it is not located within or near a key breeding area and the area proposed to be cleared for the project contains only poor quality foraging resources for the Regent Honeyeater.

The Department has considered the objectives, strategies and actions in the Recovery Plan, particularly Action 1d – Rehabilitate degraded areas that were previously commonly used by the Regent Honeyeater. The Department is satisfied that the biodiversity offset strategy and the management and mitigation actions required by the recommended conditions would result in the medium to long term improvement in the extent and quality of habitat suitable for the Regent Honeyeater, should the distribution of the population extend to the vicinity of Gunlake Quarry in the future.

Threat Abatement Plans

The Threat Abatement Plans (TAPs) relevant to this action are discussed below and are available at <http://www.environment.gov.au/biodiversity/threatened/threat-abatement-plans/approved>.

At the Department's request, EMM provided additional information (see **Appendix F**) on the consistency of the project with the relevant TAPs for two MNES listed under the EPBC Act, namely the Box Gum Woodland CEEC and the Regent Honeyeater.

For the Box Gum Woodland CEEC, the relevant TAPs are:

1. *Threat Abatement Plan for the Biological Effects, Including Lethal Toxic Ingestion, Caused by Cane Toads*

The southern-most extent of the predicted cane toad distribution in Australia is in Sydney, approximately 175 km north of the project. Therefore the project is not inconsistent with the relevant objective of the TAP which is to reduce the impact of cane toads on populations of priority native species and ecological communities.

2. *Threat Abatement Plans for Disease in Natural Ecosystems Caused by *Phytophthora cinnamomi**

EMM found that, given the distance of the project from known occurrences of this pathogen and the project's location in a lower rainfall area, there is only a low possibility of this pathogen occurring in the Box Gum Woodland CEEC in the project area.

Should it occur, the Department is satisfied that the water management and erosion controls plans required by the recommended conditions would limit the movement of topsoil potentially containing this pathogen around or off the site and is therefore satisfied that measures are in place to reduce the spread of *Phytophthora cinnamomi*. The Department therefore considers that the project is not inconsistent with this TAP.

For the Regent Honeyeater, the relevant TAP is:

1. *Threat Abatement Plan for Competition and Land Degradation by Rabbits.*

The relevant objective of this TAP is to promote the maintenance and recovery of native species and ecological communities that are affected by rabbit competition and land degradation. In the EIS's Biodiversity Assessment, EMM found that although rabbits occur within the extension area, their current impact appears to be minor. The Department has recommended that the control of feral animals on the site be implemented through the Rehabilitation and Biodiversity Offset

Management Plan and has recommended a condition to this effect. The Department is therefore satisfied that the project is not inconsistent with this TAP.

sG.2 ADDITIONAL EPBC ACT CONSIDERATIONS

Table G1 contains the additional mandatory considerations, factors to be taken into account and factors to have regard to under the Act, additional to those already discussed, which the Commonwealth Minister must consider in determining the proposed action.

Table G1: Additional considerations for the Commonwealth Minister under the EPBC Act

EPBC Act section	Considerations	Conclusion
Mandatory considerations		
136(1)(b)	Social and economic matters are discussed in Appendix N of the EIS and Section 5.7 of the Department's Assessment Report.	The Department accepts that findings of the economic assessment in Appendix N of the EIS that, from an economic efficiency perspective, the project is desirable and justified, having a net benefit to the NSW community of between \$16 and \$27 million. The project would also provide ongoing employment for up to 90 people and other local economic benefits. The social impacts of the project primarily relate to amenity impacts, principally from noise and dust. Following its assessment and subject to the recommended conditions, the Department considers that the development would be able to be undertaken in a manner that would comply with State government policies and the impacts would be acceptable.
Factors to be taken into account		
3A, 136(2)(a), 391(2)	Principles of ecologically sustainable development (ESD), including the precautionary principle, have been taken into account, particularly: <ul style="list-style-type: none"> the long-term and short-term economic, environmental, social and equitable considerations that are relevant to this decision; conditions that restrict environmental impacts and impose monitoring and adaptive management to reduce any lack of certainty related to the potential impacts of the project; conditions requiring the project to be delivered and operated in a sustainable way to protect the environment for future generations and conserving the relevant MNES; advice provided within this report reflects the importance of conserving biological diversity and ecological integrity in relation to the controlling provisions for the project; and mitigation measures to be implemented which minimise potential impacts of the project on biodiversity within the project area. 	The Department considers that the project, if undertaken in accordance with recommended conditions of approval, would be consistent with the principles of ESD.
136(2)(e)	Other information on the relevant impacts of the proposed action – the Department is not aware of any relevant information not addressed in this assessment report.	The Department considers that all significant information relevant to the impacts of the project has been taken into account in its assessment. The Department's consideration on key issues is presented in Section 5 .

Factors to have regard to		
176(5)	Bioregional plans	There is no relevant bioregional plan.
Considerations on deciding on conditions		
134(4)	Must consider: <ul style="list-style-type: none"> information provided by the person proposing to take the action or by the designated proponent of the action; and the desirability of ensuring as far as practicable that the condition(s) is a cost-effective means for the Commonwealth and a person taking the action to achieve the object of the condition. 	The key information considered in deciding on conditions is provided in the EIS (see Appendix A), RTS (see Appendix D) and additional biodiversity information (see Appendix F). The Department considers that the proposed conditions represent a cost effective solution for achieving their purpose.

G.3 THREATENED SPECIES AND COMMUNITIES (SECTIONS 18 & 18A OF EPBC ACT)

For the reasons set out in **Section 5.4** of the assessment report, the Department considers that the impacts of the action on threatened species and communities are acceptable, subject to the implementation of the avoidance and mitigation measures described in the EIS and RTS, and compliance with the requirements of the recommended conditions of approval.

The Department believes that draft conditions 28 to 37 in Schedule 3 of the proposed development consent provide a suitable regulatory framework to manage the risk of impact to listed threatened species from the project.

Accordingly, the Department recommends that the Commonwealth Minister require Gunlake to implement conditions 28 to 37 of Schedule 3 of the consent, where they relate to the management of potential impacts on listed MNES under the EPBC Act.

G.4 OTHER PROTECTED MATTERS

The Commonwealth Department of the Environment and Energy determined that other matters under the EPBC Act are not controlling provisions with respect to the proposed action. These include migratory species, Ramsar Wetlands, World Heritage properties, National Heritage places, Commonwealth marine environment, whether the referring party is a Commonwealth agency or undertaken on Commonwealth land, nuclear action, Great Barrier Reef Marine Park, Commonwealth Heritage places overseas and a water resource in relation to coal seam gas or large coal mining development.
